

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



March 22, 1999

ALL COUNTY INFORMATION NOTICE NO. I-23-99

TO: ALL COUNTY WELFARE DIRECTORS

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order or Settlement Agreement
- ☒ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

SUBJECT: CLARIFICATION OF PROVISIONS OF AB 67

REFERENCE: Chapter 606, Statutes of 1997 (AB 67), Section 14132.95 of the Welfare and Institutions Code, Section 12305.6 of the Welfare and Institutions Code, Public Law (PL) 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, All-County Letter 98-14, All-County Letter 96-52

The purpose of this All County Information Notice (ACIN) is to clarify the treatment of non-citizen applicants, denied Supplemental Security Income/State Supplementary Payments (SSI/SSP) eligibility because of PL 104-193, who are potentially eligible for in-home supportive services under AB 67.

BACKGROUND

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) enacted on August 22, 1996, specifies that qualified legal non-citizens who do not meet exception criteria are not eligible for SSI benefits. This eliminates SSI eligibility for many non-citizens. PRWORA defines the immigrant status requirements that every non-citizen must meet in order to be potentially eligible for most federal public benefits, including SSI, Food Stamps, Temporary Assistance for Needy Families, Cal-WORKs and full-scope Medi-Cal (non-qualified aliens may be eligible for emergency services under Medi-Cal).

The term "qualified alien" is used to denote only immigrants whose official immigration status with the Immigration and Naturalization Service (INS) meets the requirements of PL 104-

193 (section 431). An immigrant who meets the "qualified alien" definition is not necessarily eligible for any public benefit. A "qualified alien" has to meet other requirements to be eligible for SSI or other public benefits. PL 104-193 (as amended) defines a "qualified alien" as an alien who is:

- lawfully admitted for permanent residence in the U.S. under the Immigration and Nationality Act (INA); or
- a refugee who is admitted to the U.S. under section 207 of the INA; or
- granted asylum under section 208 of the INA; or
- paroled into the U.S. under section 212(d)(5) of the INA for a period of at least one year; or
- an alien whose deportation is being withheld under section 243(h) of the INA (under previous law), or section 241(b)(3) of the INA; or
- granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980; or
- a battered spouse, battered child, or parent or child of a battered person with a petition pending under sections 204(a)(1)(A) or (B) or 244(a)(3) of the INA.

The Balanced Budget Act of 1997 (PL 105-33) restored SSI eligibility for many non-citizens lawfully residing in the U.S. as of August 22, 1996. With some exceptions, the major groups still ineligible for federal SSI are:

- non-qualified aliens
- lawful permanent residents (qualified aliens) residing in the U.S. on August 22, 1996, who are 65 or older, but not disabled
- sponsored immigrants arriving on or after August 22, 1996

WELFARE AND INSTITUTIONS CODE, SECTION 12305.6 (AB 67)

Pursuant to Section 12305.6, any legal non-citizen who does not meet the current SSI/SSP eligibility requirements, but who would have met them prior to the enactment of the federal reform law (PL 104-193) shall continue to be eligible for the In-Home Supportive Services (IHSS) Residual program. In other words, if PL 104-193 is the only reason a non-citizen would not be eligible for IHSS (i.e., legal non-citizen who meets all disability and eligibility criteria including deeming), the individual would be eligible to receive IHSS as an income eligible applicant pursuant to AB 67.

ELIGIBILITY

Status Eligible Applicants

Legal non-citizens who are currently receiving SSI/SSP continue to be eligible for IHSS as long as they continue to receive SSI/SSP. A legal non-citizen receiving SSI/SSP whose benefits are stopped solely because of PL 104-193 will remain eligible as an income eligible case under Section 12305.6 (AB 67).

New Applicants

Legal non-citizen applicants who do not meet federal exception criteria for SSI/SSP but meet all other eligibility and disability requirements for IHSS are potentially eligible (income eligible) for the IHSS Residual program pursuant to Section 12305.6 of the Welfare and Institutions Code. Under this section, an individual must continue to meet all other applicable eligibility criteria for receiving benefits including deeming provisions.

The following references provide information on the treatment of non-citizens:

- ACL 97-34 [Automated System for Accessing Social Security Administration (SSA) Information for Verification of Work Quarters for Legal Non-Citizen Food Stamp Applicants and Recipients]
- ACL 98-82 [Cash Assistance Program for Immigrants (CAPI)]
- ACL 98-65 [Alien Eligibility for CalWORKs]
- All-County Information Notice (ACIN) I-47-95 [Alien Eligibility Reference]
- Refugee Programs Branch letter dated 11/17/98 to County Refugee Coordinators *et al* [Refugee Eligibility for Benefits Charts]

SPONSOR-TO-ALIEN DEEMING

Individuals who receive benefits under Section 12305.6 (AB 67) are subject to all applicable deeming provisions pursuant to Title XVI of the Social Security Act (Subchapter 16, commencing with Section 1381, of Chapter 7 of Title 42, United States Code). Deeming is the term for the process of considering another person's income to belong to the applicant. See Attachments A (Sponsor-to-Alien Deeming of Income and Resources) and B (applicable sections from the Code of Federal Regulations) for examples of what is meant by sponsor-to-alien deeming and for examples of sponsor-to-alien deeming rules.

CITIZENSHIP/STATUS CODING

Until further notice, counties do not have to enter citizenship coding as required in ACL 98-14. As long as the recipient is in the Medi-Cal Eligibility Data System (MEDS), the state will obtain citizenship status information from a match with MEDS. However, if a recipient refuses a Medi-Cal card (i.e., will not be in MEDS), the county will have to gather and input citizenship

status information. The social worker can refer to his/her county Medi-Cal Program specialists/liaisons for this information. Additionally, the following references on identification and tracking of non-citizens may be useful:

- ACL 98-14 [In-Home Supportive Services (IHSS): Alien Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (HR 3734)]
- ACIN I-20-98 [Welfare Reform Tracking Requirements and Regional Training Information]
- Department of Health Services (all county) Letter No. 97-42 [Qualified and Not Qualified Aliens: Identification and Tracking Requirements]

Any additional questions or clarification pertaining to this ACIN may be directed to the Operations and Technical Assistance Units and the analyst assigned to your county at (916) 229-4000.

Sincerely,

***Original Document Signed by
Donna L. Mandelstam on 3/22/99***

DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division

Attachments

SPONSOR-TO-ALIEN DEEMING OF INCOME AND RESOURCES

SPONSORS

A sponsor is an individual (but not an organization such as the congregation of a church or a service club, or an employer who only guarantees employment for an alien upon entry but does not sign an affidavit of support) who signs an affidavit of support agreeing to support an alien as a condition of admission of the alien for permanent residence in the United States. An alien may have more than one sponsor.

DEEMING

Deeming is the term for the process of considering another person's income to belong to the applicant. Deeming may occur from an ineligible spouse, from an ineligible parent to a minor child, or from a sponsor (and his/her spouse living in the same household with the sponsor) who signed an affidavit of support for the sponsored alien. Deeming from an ineligible spouse or parent occurs only when the deemor is living in the same household with the applicant/recipient. Deeming from a sponsor may occur regardless of whether the sponsor lives in the same household as the applicant/recipient.

When any of the deeming rules apply, it does not matter whether the income of the deemor is actually made available to the recipient/applicant. Unless an exclusion applies (see Aliens not Subject to Sponsor-To-Alien Deeming below), sponsor-to-alien deeming applies to sponsored aliens who have lawful permanent resident status whether that status was granted at the time of entry into the U.S. or adjusted after entry. The date of lawful admission is the date used for deeming purposes regardless of the date of the alien's physical entry in the U.S.

Example 1:

An individual with a student visa allowing temporary U.S. residence has his/her status changed to permanent resident status.

If the individual has a sponsor, sponsor-to-alien deeming, if applicable, begins with the month the individual's status was adjusted to that of permanent resident.

Example 2:

An alien's status changes from refugee (i.e., excluded by statute from sponsor-to-alien deeming) to permanent resident.

An alien who is excluded by statute from sponsor-to-alien deeming and whose status is adjusted to that of a permanent resident retains the statutory exclusion from sponsor deeming.

DEEMING PERIOD

Under the Immigration Reform Act of 1996, the Immigration and Naturalization Service (INS) is required to use a new version of the affidavit of support. Neither the deeming period nor deeming methodology changed for aliens whose sponsors signed old version affidavits of support unless the sponsor subsequently signed a new version affidavit of support (INS form I-864[1/21/98]Y). If the sponsor(s) signed the old version of affidavit of support (INS form I-134 or a similar form), the deeming period as of 10/1/96 is three years following the date of lawful admission to the United States (U.S.). If the sponsor(s) signed a new version affidavit of support and deeming is required, it will apply until the alien becomes a naturalized citizen of the U.S. or has 40 qualifying quarters of work, whichever comes first, or the sponsor dies. Otherwise, deeming is indefinite.

The following can be used to document the existence of an affidavit of support:

- a photocopy of the affidavit of support; or
- a written statement from INS verifying the existence of an affidavit of support; or
- a record of a phone or field contact with INS which verifies the existence of an affidavit of support.

Example 1:

A sponsored alien becomes eligible for SSI on 8/1/96. The alien's date of lawful admission is 9/29/93.

Until 10/1/96, the deeming period is 5 years. Effective 10/1/96, the deeming period becomes three years. In this case, deeming applies in 8/96 and 9/96.

Example 2:

A sponsored alien files for SSI on 9/5/96 and has an application effective date of 10/1/96. The alien's date of lawful admission is 9/29/93.

Sponsor deeming does not apply in this case because effective 10/1/96, the deeming period is three years (and the alien's three-year period ends on 8/31/96).

Example 3:

A sponsored alien has an application effective date of 11/1/97. The alien's date of lawful admission is 8/6/96. The sponsor signed a new version affidavit of support on 2/1/98.

When deeming is required, it will apply until the alien becomes a naturalized citizen of the U.S. or has 40 qualifying quarters, whichever comes first. If neither event occurs, deeming will continue indefinitely.

ALIENS NOT SUBJECT TO SPONSOR-TO-ALIEN DEEMING

Sponsor-to-alien deeming does not apply to all aliens. Aliens may be excluded from sponsor-to-alien deeming by any of the following:

- statute; or
- because they are not lawfully admitted to the U.S. for permanent residence (LAPR); or
- because they do not have a sponsor; or
- because the sponsor is the alien's eligible or ineligible spouse or a parent whose income is otherwise considered in determining the alien's SSI eligibility or payment amount.

Excluded from Deeming by Statute

- Alien has refugee status under Immigration and Nationality Act (INA) Section 203(a)(7), 207(c)(1), or 212(d)(5).
- Alien was granted political asylum by the Attorney General of the United States.
- Alien is blind or disabled and the blindness or disability began after the alien's date of admission to the U.S. for permanent residence. This exclusion does not apply if the sponsor signed the new version affidavit of support.
- Alien first filed for SSI before 10/1/80. If the alien filed before 10/1/80 but withdrew his/her application, the alien can be subject to sponsor-to-alien deeming. If the alien applied before 10/1/80 but voluntarily terminated his/her eligibility, the alien is not subject to sponsor-to-alien deeming.

Excluded from Deeming for Other Reasons

- Alien is permanently residing in the U.S. under color of law (PRUCOL). However, they may become subject to deeming if they become LAPR.
- Alien is not required to have a sponsor(s):
 - Alien granted LAPR status under Section 249 of the INA as "registry" applicant for whom the INS records of permanent admission are not available.
 - Applicants for permanent residence who are Amerasians or relatives of Amerasians only if the admission codes are one of the following:
 - Amerasian born in Vietnam between 1/1/62 and 1/1/76 (INS form I-551 code AM-1 or AM-6 only)
 - spouse and/or child of an Amerasian as above (INS form I-551 code AM-2 or AM-7 only)
 - mother of an unmarried Amerasian, her spouse and/or child (INS form I-551 Code AM-3 or AM-8 only)

- a person who acted as the parent of an Amerasian and his/her spouse and/or child (INS form I-551 code AM-3 or AM-8 only)
 - applicants for adjustment under the Cuban/Haitian provisions of section 202 of the Immigration Reform and Control Act (INS form I-94 code CH6 only)
- Alien's sponsor is the alien's ineligible spouse or parent living in the same household as the alien. Instead, the regular spouse-to-spouse or parent-to-child deeming rules apply. In any month the alien is not subject to deeming from the ineligible spouse or parent (e.g., the alien and sponsor/spouse live in separate households), the sponsor-to-alien deeming rules apply.
 - Alien's admission to the U.S. was due solely to promotion by an organization. However, any cash or in-kind receipts received by an alien from an organization must be considered under the normal SSI income counting rules.
 - Alien whose admission as a permanent resident is based on a guarantee of employment from an employer who does not sign an affidavit of support. If the alien whose employment is guaranteed is sponsored by a different individual who signs an affidavit of support, sponsor-to-alien deeming applies from the latter individual.
 - Alien's sponsor dies.
 - Sponsorship cannot be established through INS records (i.e., no evidence that an affidavit of support or similar document was filed with the INS).

MULTIPLE DEEMING SITUATIONS

An alien may be subject to more than one period of sponsor-to-alien deeming. For example, if the INS revokes an individual's lawful permanent resident status but the individual is later re-admitted as a permanent resident, a new deeming period begins upon readmission.

An alien may be sponsored by more than one individual. If an alien has more than one sponsor (other than the sponsor's spouse), the deeming rules are applied separately to the resources of each sponsor to determine the total resources deemable to the alien.

If an alien's sponsor is also his/her ineligible spouse or parent who lives in the same household and deeming rules apply, the applicable spouse-to-spouse or parent-to-child deeming rules are used instead of the sponsor-to-alien deeming rules.

If an alien has a sponsor and also has an ineligible spouse or parent who is not the sponsor and whose resources can be deemed to the alien, both the sponsor-to-alien and spouse-to-spouse (or parent-to-child) deeming rules apply.

If an individual sponsors two or more eligible aliens, none of whom is the spouse or child of the sponsor, then the entire amount of the sponsor's non-excluded resources are deemed to each alien (i.e., sponsor-to-alien deeming rules apply separately to each alien).

If the sponsor is not the alien's spouse or parent but is the ineligible spouse or parent of another recipient, the sponsor-to-alien deeming rules apply to the alien, and applicable spouse-to-spouse or parent-to-child deeming rules apply to the other recipient (i.e., deeming rules apply separately to each eligible individual).

If only one member of a couple is sponsored, and that member is an ineligible spouse, sponsor-to-alien deeming does not apply to the eligible member of the couple.

If each member of an eligible couple has a different sponsor, each sponsor's resources are deemed to the appropriate member. The couple's countable resources include the sum of their deemed resource amounts.

INCOME

Income is defined as anything received in cash or in-kind which can be used or sold to meet the recipient's needs for food, clothing and shelter. In-kind income is actually food, clothing or shelter, or something the recipient can use, through sale or trade, to get any of these. Income includes earned and unearned income:

- Earned income may be in cash or in kind and consists of the following types of payments: wages; net earnings from self-employment; payment for services performed in a sheltered workshop or work activities center; and certain royalties and honoraria. The monthly average of the annual net self-employment income is counted for each month of the taxable year.
- Unearned income is all income that is not earned income, earned in cash or in kind, including: annuities, pensions, and other periodic payments; alimony and support payments; dividends, interest and certain royalties; rents; death benefits; prizes and awards; gifts and inheritances; and support and maintenance in kind. Unearned income is counted in the month it is received.

EXCLUDED INCOME

None of the sponsor's or the sponsor's spouse income is excluded. All income (i.e., anything received in cash or in kind that can be used to meet basic needs of food, clothing or shelter) is counted when determining the amount of a sponsor's income subject to deeming. However, when sponsor-to-alien deeming applies, the in-kind support and maintenance given to the alien recipient by the sponsor is not counted as income to the recipient.

STEPS IN SPONSOR-TO-ALIEN DEEMING

Sponsor-to-alien deeming begins the month in which an alien is lawfully admitted into the U.S. for permanent residence or an alien's status is adjusted to permanent resident status. Either of these dates may be later than the alien's actual month of physical entry into the U.S. (the 50 states, District of Columbia, and Northern Mariana Islands). Deeming ends on the last day of the

36th consecutive month from the date of lawful admission. Calculations for sponsor-to-alien deeming are defined in the Code of Federal Regulations (CFR):

- Income: 20 CFR 416.1161, 20 CFR 416.1163, and 20 CFR 416.1166a
- Resources: 20 CFR 416.1202 and 20 CFR 416.1204

Attachment B contains copies of the CFR sections on calculating income and resources for sponsor-to-alien deeming.

The IHSS share of cost after sponsor-to-alien deeming can be determined as follows:

1. Determine the total sponsor's and sponsor's spouse earned and unearned income.
2. Deduct the applicable allowances (based on the appropriate federal Supplemental Security Income (SSI) standard(s) allocations):
 - If the spouse is also a sponsor, the allocation (federal SSI individual rate) for the sponsor and the additional allocation (federal SSI individual rate) for the sponsor's spouse is deducted from the total income.
 - If the spouse is not a sponsor, then the spouse's allocation is only equal to one-half of the federal SSI individual rate.
 - If there are any ineligible children living in the household belonging to the sponsor or the sponsor's spouse, deduct an allocation for each, equal to one-half of the federal SSI individual rate. If any child has income, that child's allocation is not reduced by the amount of that income.

The income of the sponsor(s), after allowances for dependents and all other appropriate income exclusions have been applied, is counted as income to the recipient. Even when the sponsor (and spouse) are sponsoring more than one recipient, the total after deducting allocations is used as deemed income for each alien recipient. A worksheet like the sample worksheet in Figure 1 can be used to complete these calculations.

Figure 1. Sponsor-to-Alien Deeming Sample Worksheet

NAME			CASE NUMBER		MONTH
SPONSOR			RECIPIENT		
A. Income of sponsor	Unearned	Earned	B. Income of recipient	Unearned	Earned
1. Gross income	\$	\$	1. Income deemed to recipient (from A6)	\$	
2. Total income (A1 earned plus A1 unearned)	\$		2. Other unearned income		
3. Allowance for sponsor	\$		a.	\$	
4. Allowance for dependents	\$		b.	\$	
5. Total allowance (A3 + A4)	\$		c.	\$	
6. Countable income (A2 minus A5)	\$		3. Total other unearned income (B2a+B2b+B2c)	\$	
			4. Total unearned income (B1 +B3)	\$	
			5. Any income exclusion	\$ 20.00	
			6. Net unearned income (B4 minus B5)	\$	
			7. Earned income		\$
			8. Unused \$20 exclusion		\$
			9. Earned income exclusion		\$ 65.00
			10. Total exclusions		\$
			11. Remaining earned income		\$
			12. Net earned income (B11 x ½)		\$
			13. Total countable income (B6 plus B12)	\$	
			14. SSI/SSP payment level	\$	
			15. IHSS share of cost	\$	

§416.1161

or adopted child of your spouse, or the natural or adopted child of your parent or of your parent's spouse (as the terms child and spouse are defined in § 416.1101), who is under age 21, lives in the same household with you, and is not eligible for SSI benefits.

Ineligible parent means a natural or adoptive parent, or the spouse (as defined in § 416.1101) of a natural or adoptive parent, who lives with you and is not eligible for SSI benefits. The income of ineligible parents affects your benefit only if you are a child under age 18.

Ineligible spouse means someone who lives with you as your husband or wife and is not eligible for SSI benefits.

Sponsor means an individual (but not an organization such as the congregation of a church or a service club, or an employer who only guarantees employment for an alien upon entry but does not sign an affidavit of support) who signs an affidavit of support agreeing to support you as a condition of your admission as an alien for permanent residence in the United States.

[52 FR 8882, Mar. 20, 1987, as amended at 54 FR 19164, May 4, 1989]

§416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

The first step in deeming is determining how much income your ineligible spouse, ineligible parent (if you are a child), your sponsor (if you are an alien), or your essential person, has. We do not always include all of their income when we determine how much income to deem. In this section we explain the rules for determining how much of their income is subject to deeming. As part of the process of deeming income from your ineligible spouse or parent, we must determine the amount of income of any ineligible children in the household.

(a) *For an ineligible spouse or parent.* We do not include any of the following types of income (see §416.1102) of an ineligible spouse or parent:

(1) Income excluded by Federal laws other than the Social Security Act (See the appendix to this subpart.)

(2) Any public income-maintenance payments (§416.1142(a)) your ineligible spouse or parent

receives, and any income which was counted or excluded in figuring the amount of that payment;

(3) Any of the income of your ineligible spouse or parent that is used by a public income-maintenance program (§416.1142(a)) to determine the amount of that program's benefit to someone else;

(4) Any portion of a grant, scholarship, or fellowship used to pay tuition or fees;

(5) Money received for providing foster care to an ineligible child;

(6) The value of food stamps and the value of Department of Agriculture donated foods;

(7) Food raised by your parent or spouse and consumed by members of the household in which you live;

(8) Tax refunds on income, real property, or food purchased by the family;

(9) Income used to fulfill an approved plan for achieving self-support (see §§416.1180 through 416.1182);

(10) Income used to comply with the terms of court-ordered support, or support payments enforced under title IV-D of the Act;

(11) The value of in-kind support and maintenance;

(12) Alaska Longevity Bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985: met the 25-year residency requirement for receipt of such payments in effect prior to January 1, 1983; and was eligible for SSI;

(13) Disaster assistance as described in §§416.1150 and 416.1151;

(14) Income received infrequently or irregularly (see §§ 416.1112(c)(1) and 416.1124(c)(6));

(15) Work expenses if the ineligible spouse or parent is blind;

(16) Income of your ineligible spouse or ineligible parent which was paid under a Federal, State, or local government program (For example, payments under title XX of the Social Security Act) to provide you with chore, attendant or homemaker services;

(17) Certain support and maintenance assistance as described in §416.1157(c);

(18) Housing assistance as provided in § 416.1124(c)(14);

(19) The value of a commercial transportation ticket as described in § 416.1161(c)(16). However,

if such a ticket is converted to cash, the cash is income in the month your spouse or parent receives the cash;

(20) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, as provided in § 416.1112(c);

(21) Payments from a fund established by a State to aid victims of crime (see §416.1124(c)(17));

(22) Relocation assistance, as described in § 416.1124(c)(18); and

(23) Hostile fire pay received from one of the uniformed services pursuant to 37 U.S.C. 310;

(24) Impairment-related work expenses, as described in 20 CFR 404.1576, incurred and paid by an ineligible spouse or parent, if the ineligible spouse or parent receives disability benefits under title II of the Act; and

(25) Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements which are left to accumulate and become part of separate burial funds, and interest accrued on and left to accumulate as part of the value of agreements representing the purchase of excluded burial spaces (see §416.1124(c) (9) and (15)).

(b) *For an essential person or for a sponsor of an alien.* We include all the income (as defined in § 416.1102) of an essential person or of a sponsor of an alien and of the spouse of the sponsor (if the sponsor and spouse live in the same household) except for support and maintenance assistance described in § 416.1157(c), and income excluded under Federal laws other than the Social Security Act. For information on these laws see the appendix to this subpart.

(c) *For an ineligible child.* Although we do not deem any income to you from an ineligible child, we reduce his or her allocation if the ineligible child has income (see § 416.1163(b)(2)). For this purpose, we do not include any of the child's income listed in paragraph (a) of this section. In addition, if the ineligible child is a student (see § 416.1861), we exclude any of the child's earned income up to \$400 a month but not more than \$1,620 per year.

(d) *For an eligible alien.* Although we do not deem any income to you from an eligible alien, if your ineligible spouse or ineligible parent is also a

sponsor of an eligible alien, we reduce the alien's allocation if he or she has income (see § 416.163(c)(2)) For this purpose exclude any of the alien's income listed in paragraph (a) of this section.

[45 FR 65547, Oct. 3, 1980, as amended at 46 FR 57276, Nov. 23, 1981; 48 FR 33259, July 21, 1983; 50 FR 48576, Nov. 26, 1985; 51 FR 39523, Oct. 29, 1986; 52 FR 8883, Mar. 20, 1987; 52 FR 44971, Nov. 24, 1987; 55 FR 28378, July 11 1990; 58 FR 63888, 63890, Dec. 3, 1993; 61 FR 1712, Jan. 23, 1996; 61 FR 49964, Sept. 24, 1996]

§416.1161a Income for deeming purposes where Medicaid eligibility is affected

(a) *General.* In many States, an individual who is eligible for SSI or a Federally administered State optional supplementary payment is in turn eligible for Medicaid. Also, several other States use SSI deeming rules in determining eligibility for Medicaid. In all of these States, in extraordinary cases, the Department will not apply the usual rules on deeming of income where those rules would result in an individual's being ineligible for SSI (or a Federally administered State optional supplementary payment) and Medicaid. Any determination made under this section may at any time be revised based on new information or changed circumstances.

(b) *When special deeming rules apply:*

(1) The Department will consider not applying the usual deeming rules only upon application by a State Medicaid agency (requirement approved under OMB No. 0960 0304) and on condition that the agency must show:

(i) Deeming would result in lack of Medicaid eligibility for the individual.

(ii) Medicaid eligibility would, prospectively, result in savings to the Medicaid program; and

(iii) The quality of medical care necessary for the individual would be maintained under the arrangements contemplated.

(2) The Department may also in particular cases require that additional facts be demonstrated, or that other criteria or standards be met, before it determines not to apply the usual deeming rules.

(c) *Amount of income to be deemed.* If the usual rules of deeming do not apply, the

Department will determine an amount, if any, to be deemed.

(d) *Temporary effect of special deeming rules.* This provision is temporary and will be continued only through December 31, 1984. Determinations made under this section will nevertheless remain in effect unless they are revised based on changed circumstances (including establishment in the State of a Medicaid program of home and community-based services or eligibility under a State plan provision) or new information.

[49 FR 5747, Feb. 15, 1984]

§ 416.1163 How we deem Income to you from your ineligible spouse.

If you have an ineligible spouse who lives in the same household, we apply the deeming rules to your ineligible spouse's income in the following order.

(a) *Determining your ineligible spouse's income.* We first determine how much earned and unearned income your ineligible spouse has, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We then deduct an allocation for ineligible children in the household to help meet their needs. Exception: We do not allocate for ineligible children who are receiving public income-maintenance payments (see § 416.1142(a)).

(1) The allocation for each ineligible child is the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to determine the amount of a benefit for a current month is based on the Federal benefit rate that applied in the second prior month unless one of the exceptions in § 416.1160(b)(2) applies.

(2) Each ineligible child's allocation is reduced by the amount of his or her own income as described in § 416.1161(c).

(3) We first deduct the allocations from your ineligible spouse's unearned income. If your ineligible spouse does not have enough unearned income to cover the allocations we deduct the balance from your ineligible spouse's earned income.

(c) *Allocations for aliens sponsored by your ineligible spouse.* We also deduct an allocation for

eligible aliens who have been sponsored by and who have income deemed from your ineligible spouse.

(1) The allocation for each alien who is sponsored by and who has income deemed from your ineligible spouse is the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to compute your benefit for a current month is based on the Federal benefit rate that applied in the second prior month (unless the current month is the first or second month of eligibility or re-eligibility as explained in § 416.420(a) and (b) (2) and (3)).

(2) Each alien's allocation is reduced by the amount of his or her own income as described in § 416.1161(d).

(3) We first deduct the allocations from your ineligible spouse's unearned income. If your ineligible spouse does not have enough unearned income to cover the allocations, we deduct the balance from your ineligible spouse's earned income.

(d) *Determining your eligibility for SSI.*

(1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, there is no income to deem to you from your spouse. In this situation, we subtract only your own countable income from the Federal benefit rate for an individual to determine whether you are eligible for SSI benefits.

(2) If the amount of your ineligible spouse's income that remains after appropriate allocations is more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, we treat you and your ineligible spouse as an eligible couple. We do this by:

(i) Combining the remainder of your spouse's unearned income with your own unearned income and the remainder of your spouse's earned income with your earned income;

(ii) Applying all appropriate income exclusions in §§ 416.1112 and 416.1124; and

(iii) Subtracting the couple's countable income from the Federal benefit rate for an eligible couple. (See § 416.2025(b) for determination of the State supplementary payment amount.)

(e) *Determining your SSI benefit.* (1) In determining your SSI benefit amount we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible spouse's income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(b)(2) applies (for example, if this is the first month you are eligible for an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility (or re-eligibility), we deem your ineligible spouse's income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible spouse's income in that month to determine whether you are eligible for a benefit but we deem your ineligible spouse's income in the first month to determine the amount of your benefit.

(2) Your SSI benefit under the deeming rules cannot be higher than it would be if deeming did not apply. Therefore, your benefit is the lesser of the amount computed under the rules in paragraph (d)(2) of this section or the amount remaining after we subtract only your own countable income from an individual's Federal benefit rate.

(f) *Special rules for couples when a change in status occurs.* We have special rules to determine how to deem your spouse's income to you when there is a change in your situation.

(1) *Ineligible spouse becomes eligible.* If your ineligible spouse becomes eligible for SSI benefits, we treat both of you as newly eligible. Therefore, your eligibility and benefit amount for the first month you are an eligible couple will be based on your income in that month. In the second month, your benefit amount will also be based on your income in the first month.

(2) *Spouses separate or divorce.* If you separate from your ineligible spouse or ends by divorce, we do not deem your ineligible spouse's income to you to determine your eligibility for benefits beginning with the first month following the event. If you remain eligible, we determine your benefit amount by following the rule in paragraph (e) of this section provided deeming from your spouse applied in the prior month.

(3) *Eligible individual begins living with an ineligible spouse.* If you begin to live with your ineligible spouse, we deem your ineligible spouse's income to you in the first month thereafter to determine whether you continue to be eligible for SSI benefits. If you continue to be eligible, we follow the rule in § 416.420(a) to determine your benefit amount.

(4) *Ineligible spouse dies.* If your ineligible spouse dies, we do not deem your spouse's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(5) *You become subject to the \$30 Federal benefit rate.* If you become a resident of a medical care facility and the \$30 Federal benefit rate applies, we do not deem your ineligible spouse's income to you to determine your eligibility for SSI benefits beginning with the first month for which the \$30 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the \$30 Federal benefit rate applies, we use only your own countable Income In a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(g) *Examples.* These examples show how we deem income from an ineligible spouse to an eligible individual in cases which do not involve any of the exceptions in § 416.1160(b)(2). The income, the income exclusions, and the allocations are monthly amounts. The Federal benefit rates used are those effective January 1, 1986.

Example 1. In September 1986, Mr. Todd, an aged individual, lives with his ineligible spouse, Mrs. Todd, and their ineligible child, Mike. Mr. Todd has a Federal benefit rate of \$336 per month. Mrs. Todd receives \$252 unearned income per month. She has no earned income and Mike has no income at all. Before we deem any income, we allocate to Mike \$168 (the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rates for an eligible individual). We subtract the \$168 allocation from Mrs. Todd's \$252 unearned income, leaving \$84. Since Mrs. Todd's \$84 remaining income is not more than \$168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we do not deem any income to Mr. Todd. Instead, we compare only Mr. Todd's own countable income with the Federal benefit rate for an eligible individual to determine whether he is eligible. If Mr. Todd's own countable income is less than his Federal benefit rates, he is eligible. To determine the amount of his benefit, we determine his countable income, including any income deemed from Mrs. Todd, in July and subtract this income from the appropriate Federal benefit rate for September.

Example 2. In September 1986, Mr. Jones, a disabled individual, lives with his ineligible spouse, Mrs. Jones, and ineligible child, Christine. Mr. Jones and Christine have no income. Mrs. Jones has earned income of \$401 a month and unearned income of \$252 a month. Before we deem any income, we allocate \$168 to Christine. We take the \$168 allocation from Mrs. Jones' \$252 unearned income, leaving \$84 in unearned income. Since Mrs. Jones' total remaining income (\$84 unearned plus \$401 earned) is more than \$168, which is the difference between the September Federal benefit rates for an eligible couple and the September Federal benefit rate for an eligible individual, we compute the combined countable income as we do for a couple. We apply the \$20 general income exclusion to the unearned income, reducing it further to \$64. We then apply the earned income exclusion (\$65 plus one-half the remainder) to Mrs. Jones' earned income of \$401, leaving \$168. We combine the \$64 countable unearned income and \$168 countable earned income, and compare it (\$232) with the \$504 September Federal benefit rate for a couple, and determine that Mr. Jones is eligible. Since Mr. Jones is eligible, we determine the amount of his benefit by subtracting his countable income in July (including any deemed from Mrs. Jones) from September's Federal benefit rate for a couple.

Example 3. In September 1986, Mr. Smith, a disabled individual, lives with his ineligible spouse, Mrs. Smith, who earns \$201 per month. Mr. Smith receives a

pension (unearned income) of \$100 a month. Since Mrs. Smith's income is greater than \$168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rates for an eligible individual, we deem all of her income to be available to both Mr. and Mrs. Smith and compute the combined countable income for the couple. We apply the \$20 general income exclusion to Mr. Smith's \$100 unearned income, leaving \$80. Then we apply the earned income exclusion (\$65 plus one-half of the remainder) to Mrs. Smith's \$201, leaving \$68. This gives the couple total countable income of \$148. This is less than the \$504 September Federal benefit rate for a couple, so Mr. Smith is eligible based on deeming. Since he is eligible, we determine the amount of his benefit based on his income (including any deemed from Mrs. Smith) in July.

Example 4. In September 1986, Ms. Simon has a disabled spouse, Mrs. Simon, and has sponsored an eligible alien, Ms. Ollie. Mrs. Simon has monthly unearned income of \$100 and Mr. Simon has earned income of \$405. From Ms. Simon's earned income we allocate to Mr. Ollie \$168, which is the difference between the Federal benefit rate for an eligible couple and the rate for an eligible individual. Mr. Ollie has no other income. This reduces Mr. Simon's earned income from \$405 to \$237. Since \$237 is more than \$168 (the difference between the Federal benefit rate for an eligible couple and the rate for an eligible individual), we deem all of Mr. Simon's remaining income to be available to Mr. and Mrs. Simon and compute the combined countable income for the couple. We apply the \$20 general income exclusion to Mrs. Simon's unearned income, leaving \$80. Then we apply the general earned income exclusion (\$65 plus one-half the remainder) to Mr. Simon's \$237 earned income, leaving \$86. This gives the couple total income of \$166 (\$80+\$86.). The \$166 is less than the \$504 Federal benefit rate for a couple so Mrs. Simon would be eligible based on deeming. Since she is eligible, we determine the amount of her benefit based on her income (including any deemed from Mr. Simon) in July. For the way we deem Mr. Simon's income to Mr. Ollie, see the rules in § 416.1166a.

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48576, Nov. 26, 1985; 52 FR 8883, Mar. 20, 1987; 53 FR 25151, July 5, 1988; 54 FR 19164, May 4, 1989]

§ 416.1165 How we deem income to you from your ineligible parent(s).

If you are a child living with your parents, we apply the deeming rules to you through the month in which you reach age 18. We follow the rules in

§416.1166 How we deem income to you and your eligible child from your ineligible spouse.

If you and your eligible child live in the same household with your ineligible spouse, we deem your ineligible spouse's income first to you, and then we deem any remainder to your eligible child. For the purpose of this section, SSI benefits include any federally administered State supplement. We then follow the rules in § 416.1165(e) to determine the child's eligibility for SSI benefits and in § 416.1165(f) to determine the benefit amount.

(a) *Determining your ineligible spouse's income.* We first determine how much earned and unearned income your ineligible spouse has, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We next deduct an allocation for each ineligible child in the household as described in § 416.1163(b).

(c) *Allocations for aliens who are sponsored by and have income deemed from your ineligible spouse.* We also deduct an allocation for eligible aliens who have been sponsored by and have income deemed from your ineligible spouse as described in § 416.1163(c).

(d) *Determining your eligibility for SSI benefits and benefit amount.* We then follow the rules in § 416.1163(c) to find out if any of your ineligible spouse's current monthly income is deemed to you and, if so, to determine countable income for a couple. Next, we follow (d) below to determine your child's eligibility. However, if none of your spouse's income is deemed to you, none is deemed to your child. Whether or not your spouse's income is deemed to you in determining your eligibility, we determine your benefit amount as explained in § 416.1163(d).

(e) *Determining your child's eligibility and amount of benefits.* (1) If you are eligible for SSI benefits after your spouse's income has been deemed to you, we do not deem any income to your child. To determine the child's eligibility, we subtract the child's own countable income without deeming from the benefit rate for an individual.

(2) If you are not eligible for SSI benefits after your ineligible spouse's income has been deemed to you, we deem to your eligible child any

of your spouse's income which was not used to reduce your SSI benefits to zero.

(f) *Examples.* These examples show how we deem income to an eligible individual and an eligible child in the same household. The Federal benefit rates used are those effective January 1, 1984.

Example 1. Mary, a blind individual, lives with her husband, John, and their disabled child, Peter. Mary and Peter have no income, but John is employed and earns \$605 per month. We determine Mary's eligibility first. Since John's income is more than \$157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire \$605 as earned income available to John and Mary as a couple. Because they have no unearned income, we reduce the \$605 by the \$20 general income exclusion, and then by the earned income exclusion of \$65 plus one-half the remainder. This leaves John and Mary with \$260 in countable income. The \$260 countable income is less than the \$472 Federal benefit rate for a couple, so Mary is eligible; therefore, there is no income to be deemed to Peter.

Example 2. Al, a disabled individual, resides with his ineligible spouse, Dora, and their disabled son, Jeff. Al and Jeff have no income, but Dora is employed and earns \$1,065 a month. Since Dora's income is more than \$157, which is one-half of the Federal benefit rate for an eligible individual, we treat the entire \$1,065 as earned income available to Al and Dora as a couple. We reduce this income by the \$20 general income exclusion and then by \$65 plus one-half the remainder (earned income exclusion), leaving \$490 in countable income. Al is ineligible because the couple's \$490 countable income exceeds the \$472 Federal benefit rate for a couple. Since Al is ineligible, we deem to Jeff \$18, the amount of income over and above the amount which causes Al to be ineligible (the difference between the countable income and the Federal benefit rate for a couple). We treat the \$18 deemed to Jeff as unearned income, and we apply the \$20 general income exclusion, reducing Jeff's countable income to zero. Jeff is eligible.

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48578, Nov. 26, 1985; 52 FR 8887, Mar. 20, 1987]

§ 416.1166a How we deem income to you from your sponsor If you are an alien.

Before we deem your sponsor's income to you if you are an alien, we determine how much earned and unearned income your sponsor has under § 416.1161(b). We then deduct allocations for the

sponsor and the sponsor's dependents. This is an amount equal to the Federal benefit rate for an individual for the sponsor (or for each sponsor even if two sponsors are married to each other and living together) plus an amount equal to one-half the Federal benefit rate for an eligible individual for each dependent of the sponsor. An ineligible dependent's income is not subtracted from the sponsor's dependent's allocation. We deem the balance of the income to be your unearned income.

(a) *If you are the only alien applying for or already eligible for SSI benefits who has income deemed to you from your sponsor.* If you are the only alien who is applying for or already eligible for SSI benefits and who is sponsored by your sponsor, all the deemed income is your unearned income.

(b) *If you are not the only alien who is applying for or already eligible for SSI benefits and who has income deemed from your sponsor.* If you and other aliens applying for or already eligible for SSI benefits are sponsored by the same sponsor, we deem the income to each of you as though you were the only alien sponsored by that person. The income deemed to you becomes your unearned income.

(c) *When you are an alien and income is no longer deemed from your sponsor.* If you are an alien and have had your sponsor's income deemed to you, we stop deeming the income with the month in which the third anniversary of your admission into the United States occurs.

(d) *When sponsor deeming rules do not apply to you if you are an alien.* If you are an alien, we do not apply the sponsor deeming rules to you if-

(1) *You are a refugee.* You are a refugee admitted to the United States as the result of application of one of three sections of the Immigration and Nationality Act: (1) Section 203(a)(7), effective before April 1, 1980; (2) Section 207(c)(1), effective after March 31, 1980; or (3) Section 212(d)(5);

(2) *You have been granted asylum.* You have been granted political asylum by the Attorney General of the United States; or

(3) *You become blind or disabled.* If you become blind or disabled as defined in

§ 416.901 (at any age) after your admission to the United States, we do not deem your sponsor's income to you to determine your eligibility for SSI benefits beginning with the month in which your disability or blindness begins. However, to determine your benefit payment, we follow the rule in § 416.420 of counting your income in the second month prior to the current month.

(e) *Examples.* These examples show how we deem a sponsor's income to an eligible individual who is an alien when none of the exceptions in § 416.1160(b)(2) applies. The income, income exclusions, and the benefit rates are in monthly amounts. The Federal benefit rates are those effective January 1, 1986.

Example 1. Mr. John, an alien who has no income, has been sponsored by Mr. Herbert who has monthly earned income of \$1,300 and unearned income of \$70. Mr. Herbert's wife and three children have no income. We add Mr. Herbert's earned and unearned income for a total of \$1,370 and apply the allocations for the sponsor and his dependents. Allocations total \$1,008. These are made up of \$336 (the Federal benefit rate for an eligible individual) for the sponsor, plus \$672 (one-half the Federal benefit rate for an eligible individual, \$168 each) for Mr. Herbert's wife and three children. The \$1,008 is subtracted from Mr. Herbert's total income of \$1,370 which leaves \$362 to be deemed to Mr. John as his unearned income. Mr. John's only exclusion is the \$20 general income exclusion. Since the \$342 balance exceeds the \$336 Federal benefit rate, Mr. John is ineligible.

Example 2. Mr. and Mrs. Smith are an alien couple who have no income and who have been sponsored by Mr. Hart. Mr. Hart has earned income of \$1,350 and his wife, Mrs. Hart, who lives with him, has earned income of \$150. Their two children have no income. We combine Mr. and Mrs. Hart's income (\$1,350+\$150=\$1,500). We deduct the allocations of \$336 for Mr. Hart (the Federal benefit rate for an individual) and \$504 for Mrs. Hart and the two children (\$168 or one-half the Federal benefit rate for an eligible individual for each), a total of \$840. The allocations (\$840) are deducted from the total \$1,500 income which leaves \$660. This amount must be deemed independently to Mr. and Mrs. Smith. Mr. and Mrs. Smith would qualify for SSI benefits as a couple in the amount of \$504 if no income had been deemed to them. The \$1,320 (\$660 each to Mr. and Mrs. Smith) deemed

income is unearned income to Mr. and Mrs. Smith and is subject to the \$20 general income exclusion, leaving \$1,300. This exceeds the couple's rate of \$504 so Mr. and Mrs. Smith are ineligible for SSI benefits.

Example 3. Mr. Bert and Mr. Davis are aliens sponsored by their sister Mrs. Jean, who has earned income of \$800. She also receives \$250 as survivors' benefits for her two minor children. We do not consider the \$250 survivors' benefits to be Mrs. Jean's income because it is the children's income. We exclude \$336 for Mrs. Jean (the Federal benefit rate for an individual) plus \$336 (\$168, one-half the Federal benefit rate for an eligible individual for each child), a total of \$672. We subtract the \$672 from Mrs. Jean's income of \$800, which leaves \$128 to be deemed to Mr. Bert and Mr. Davis. Each of the brothers is liable for rent in the boarding house (a commercial establishment) where they live. Each lives in his own household, receives no in-kind support and maintenance, and is eligible for the Federal benefit rate of \$336. The \$128 deemed income is deemed both to Mr. Bert and to Mr. Davis. As a result, each has countable income of \$108 (\$128 minus the \$20 general income exclusion). This is less than \$336, the Federal benefit rate for an individual, so that both are eligible for SSI. We use their income in a prior month to determine their benefit payments.

Example 4. The same situation applies as in example 3 except that one of Mrs. Jean's children is disabled and eligible for SSI benefits. The eligibility of the disabled child does not affect the amount of income deemed to Mr. Bert and Mr. Davis since the sponsor-to-alien and parent-to-child rules are applied independently. The child's countable income is computed under the rules in § 416.1165.

[52 FR 8887, Mar. 20, 1987]

§ 416.1167 Temporary absences and deeming rules.

(a) *General.* During a temporary absence, we continue to consider the absent person a member of the household. A temporary absence occurs when-

(1) You, your ineligible spouse, parent, or an ineligible child leaves the household but intends to and does return in the same month or the month immediately following; or

(2) You enter a medical care facility and are eligible for either benefit payable under § 416.212. We consider your absence to be temporary through the last month benefits under § 416.212 were paid unless you were discharged from the facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

(b) *Child away at school.* If you are an eligible child who is away at school but comes home on some weekends or lengthy holidays and if you are subject to the control of your parents, we consider your temporarily absent from your parents' household. However, if you are not subject to parental control, we do not consider your absence temporary and we do not deem parental income (or resources) to you. Being subject to parental control affects deeming to you only if you are away at school.

(c) *Active duty military service.* If your ineligible spouse or parent is absent from the household due solely to a duty assignment as a member of the Armed Forces on active duty, we continue to consider that person to be living in the same household as you, absent evidence to the contrary. If we determine that during such an absence, evidence indicates that your spouse or parent should no longer be considered to be living in the same household as you, then deeming will cease. When such evidence exists, we determine the month in which your spouse or parent should no longer be considered to be living in the same household as you and stop deeming his or her income and resources beginning with the month following that month.

Example. Tom is a child who receives SSI. In January 1996, Tom's father leaves the household due solely to an active duty assignment as a member of the Armed Forces. Five months later in June 1996, while Tom's father is still on an active duty assignment, Tom's parents file for divorce. As a result, Tom's father will not be returning to live in Tom's household. Therefore, Tom's father should no longer be considered to be living in the same household with Tom. Beginning July 1, 1996, deeming from Tom's father will cease.

[50 FR 48579, Nov. 26, 1985, as amended at 61 FR 10280, Mar. 13, 1996; 62 FR 42411, Aug. 7, 1997]

§ 416.1168 How we deem income to you from your essential person.

(a) *Essential person's income.* If you have an essential person, we deem all of that person's income (except any not counted because of other Federal statutes as described in § 416.1161(b)) to be your own unearned income. If your essential person is also your ineligible spouse, or if you are a child whose essential person is your ineligible parent, we apply the essential person deeming

deeming under § 416.1161(a)(16), is not a resource for the calendar month following the month of its receipt. However, cash retained until the first moment of the second calendar month following its receipt is a resource at that time.

(i) For purposes of this provision, a retroactive cash payment is one that is paid after the month in which it was due.

(ii) This provision applies only to the unspent portion of those cash payments identified in this paragraph (a)(3). Once the cash from such payments is spent, this provision does not apply to items purchased with the money, even if the period described above has not expired.

(iii) Unspent money from those cash payments identified in this paragraph (a)(3) must be identifiable from other resources for this provision to apply. The money may be commingled with other funds, but if this is done in such a fashion that an amount from such payments can no longer be separately identified, that amount will count toward the resource limit described in § 416.1205.

(4) Death benefits, including gifts and inheritances, received by an individual, to the extent that they are not income in accordance with paragraphs (e) and (g) of § 416.1121 because they are to be spent on costs resulting from the last illness and burial of the deceased, are not resources for the calendar month following the month of receipt. However, such death benefits retained until the first moment of the second calendar month following their receipt are resources at that time.

(b) *Liquid resources.* Liquid resources are cash or other property which can be converted to cash within 20 days, excluding certain non-work days as explained in § 416.120(d). Examples of resources that are ordinarily liquid are stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies, financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit) and similar items. Liquid resources, other than cash, are evaluated according to the individual's equity in the resources. (See § 416.1208 for the treatment of funds held in individual and joint financial institution accounts.)

(c) *Nonliquid resources.* (1) Nonliquid resources are property which is not cash and which cannot be converted to cash within 20 days excluding certain nonwork days as explained in § 416.120(d). Examples of resources that are ordinarily nonliquid are loan agreements, household goods, automobiles, trucks, tractors, boats, machinery, livestock, buildings and land. Nonliquid resources are evaluated according to their equity value except as otherwise provided. (See § 416.1218 for treatment of automobiles.)

(2) For purposes of this subpart L, the equity value of an item is defined as:

(i) The price that item can reasonably be expected to sell for on the open market in the particular geographic area involved; minus

(ii) Any encumbrances.

[40 FR 48915, Oct. 20, 1975, as amended at 44 FR 43266, July 24, 1979; 48 FR 33259, July 21, 1983; 52 FR 4283, Feb. 11, 1987; 52 FR 16845, May 6, 1987; 53 FR 23231, June 21, 1988; 56 FR 36001, July 30, 1991; 57 FR 35461, Aug. 10, 1992; 57 FR 55089, Nov. 24, 1992; 59 FR 27988, May 31, 1994]

§ 416.1202 Deeming of resources.

(a) *Married individual.* In the case of an individual who is living with a person not eligible under this part and who is considered to be the husband or wife of such individual under the criteria in §§ 416.1806 and 416.1811, such individual's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of such spouse whether or not such resources are available to such individual. In addition to the exclusions listed in § 416.1210, pension funds which the ineligible spouse may have are also excluded. Pension funds are defined as funds held in individual retirement accounts (IRA), as described by the Internal Revenue Code, or in work-related pension plans (including such plans for self-employed individuals, sometimes referred to as Keogh plans).

(b) *Child-(1) General.* In the case of a child (as defined in § 416.1856) who is under age is, such child's resources shall be deemed to include any resources, not otherwise excluded under this

subpart, of an ineligible parent of such child (or the ineligible spouse of a parent) who is living in the same household (as defined in § 416.1851) as such child, whether or not available to such child, to the extent that the resources of such parent (or such spouse of a parent) exceed the resource limits described in § 416.1205 except as provided in paragraph (b)(2) of this section. (If the child is living with only one parent, the resource limit for an individual applies. If the child is living with both parents (or one parent and his or her spouse), the resource limit for an individual and spouse applies.) In addition to the exclusions listed in § 416.1210, pension funds which the ineligible parent or spouse of a parent may have are also excluded. "Pension funds" are defined in paragraph (a) of this section. As used in this section the term "parent" means the natural or adoptive parent of a child and "spouse of a parent" means the spouse (as defined in § 416.1806) of such natural or adoptive parent.

(2) *Disabled child under age 18.* In the case of a disabled child under age 18 who is living in the same household with his or her parents, the deeming provisions of paragraph (b)(1) of this section shall not apply if such child-

(i) Previously received a reduced SSI benefit while a resident of a medical facility, as described in § 416.414;

(ii) Is eligible for medical assistance under a Medicaid State home care plan approved by the Secretary under the provisions of section 1915(c) or authorized under section 1902(e)(3) of the Act; and

(iii) Would otherwise be ineligible because of the deeming of his or her parents' resources or income.

(c) *Applicability.* When used in this subpart L, the term individual refers to an eligible aged, blind, or disabled person, and also includes a person whose resources are deemed to be the resources of such individual (as provided in paragraphs (a) and (b) of this section) .

[40 FR 48915, Oct. 20, 1975, as amended at 50 FR 38982, Sept. 26, 1985; 52 FR 8888, Mar. 20, 1987; 52 FR 29841, Aug. 12, 1987; 52 FR 32240, Aug. 26, 1987; 60 FR 361, Jan. 4, 1995; 62 FR 1056, Jan. 8, 1997]

§ 416.1203 Deeming of resources of an essential person.

In case of a qualified individual (as defined § 416.221) whose payment standard has been increased because of the presence of an essential person (as defined in § 416.222), the resources of such qualified individual shall be deemed to include all the resources of such essential person. If such qualified individual would not meet the resource criteria for eligibility (as defined in §§ 416.1205 and 416.1260) because of the deemed resources, then the payment standard increase because of the essential person will be nullified and the provision of this section will not apply; essential person status is lost permanently. However, if such essential person is an ineligible spouse of a qualified individual or a Parent (or spouse of a parent) of a qualified individual who is a child under age 21, then the resources of such person will be deemed to such qualified individual in accordance with the provision in § 416.1202.

[39 FR 33797, Sept. 20, 1974, as amended at 51 FR 10616, Mar. 28, 1986]

§ 416.1204 Deeming of resources of the sponsor of an alien.

The resources of an alien who first applies for SSI benefits after September 30, 1980, are deemed to include the resources of the alien's sponsor for 3 years after the alien's date of admission into the United States. The date of admission is the date established by the Immigration and Naturalization Service as the date of admission for permanent residence. The resources of the sponsor's spouse are included if the sponsor and spouse live in the same household. Deeming of these resources applies regardless of whether the alien and sponsor live in the same household and regardless of whether the resources are actually available to the alien. For rules that apply in specific situations, see § 416.1166a(d).

(a) *Exclusions from the sponsor's resources.* Before we deem a sponsor's resources to an alien, we exclude the same kinds of resources that are excluded from the resources of an individual eligible for SSI benefits. The applicable exclusions from resources are explained in § 416.1210

(paragraphs (a) through (i), (k), and (m) through (q)) through § 416.1239. For resources excluded by Federal statutes other than the Social Security Act, as applicable to the resources of sponsors deemed to aliens, see the appendix to subpart K of part 416. We next allocate for the sponsor or for the sponsor and spouse (if living together). (The amount of the allocation is the applicable resource limit described in § 416.1205 for an eligible individual and an individual and spouse.)

(b) *An alien sponsored by more than one sponsor.* The resources of an alien who has been sponsored by more than one person are deemed to include the resources of each sponsor.

(c) *More than one alien sponsored by one individual.* If more than one alien is sponsored by one individual the deemed resources are deemed to each alien as if he or she were the only one sponsored by the individual.

(d) *Alien has a sponsor and a parent or a spouse with deemable resources.* Resources may be deemed to an alien from both a sponsor and a spouse or parent (if the alien is a child) provided that the sponsor and the spouse or parent are not the same person and the conditions for each rule are met.

(e) *Alien's sponsor is also the alien's ineligible spouse or parent.* If the sponsor is also the alien's ineligible spouse or parent who lives in the same household, the spouse-to-spouse or parent-to-child deeming rules apply instead of the sponsor-to-alien deeming rules. If the spouse or parent deeming rules cease to apply, the sponsor deeming rules will begin to apply. The spouse or parent rules may cease to apply if an alien child reaches age 18 or if either the sponsor who is the ineligible spouse or parent, or the alien moves to a separate household.

(f) *Alien's sponsor also is the ineligible spouse or parent of another SSI beneficiary.* If the sponsor is also the ineligible spouse or ineligible parent of an SSI beneficiary other than the alien, the sponsor's resources are deemed to the alien under the rules in paragraph (a), and to the eligible spouse or child under the rules in §§ 416.1202, 1205, 1234, 1236, and 1237.

[52 FR 8888, Mar. 20, 1987, as amended at 61 FR 1712, Jan. 23, 1996]

§416.1204a Deeming of resources where Medicaid eligibility is affected.

Section 416.1161a of this part describes certain circumstances affecting Medicaid eligibility in which the Department will not deem family income to an individual. The Department will follow the same standards, procedures and limitations set forth in that section with respect to deeming of resources.

[49 FR 5747, Feb. 15, 1984]

§416.1205 Limitation on resources.

(a) *Individual with no eligible spouse.* An aged, blind, or disabled individual with no spouse is eligible for benefits under title XVI of the Act if his or her nonexcludable resources do not exceed \$1,500 prior to January 1, 1985, and all other eligibility requirements are met. An individual who is living with an ineligible spouse is eligible for benefits under title XVI of the Act if his or her nonexcludable resources, including the resources of the spouse, do not exceed \$2,250 prior to January 1, 1985, and all other eligibility requirements are met.

(b) *Individual with an eligible spouse.* An aged, blind, or disabled individual who has an eligible spouse is eligible for benefits under title XVI of the Act if their nonexcludable resources do not exceed \$2,250 prior to January 1, 1985, and all other eligibility requirements are met.

(c) *Effective January 1, 1985 and later.* The resources limits and effective dates for January 1, 1985 and later are as follows:

Effective Date	Individual	Individual and spouse
Jan. 1, 1985	\$1,600	\$2,400
Jan. 1, 1986	1,700	2,550
Jan. 1, 1987	1,800	2,700
Jan. 1, 1988	1,900	2,850
Jan. 1, 1989	2,000	3,000

[50 FR 38982, Sept. 26, 1985]

§ 416.1207 Resources determinations.

(a) *General.* Resources determinations are made as of the first moment of the month. A resource determination is based on what assets an individual has, what their values are, and whether or